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PALO ALTO CA 94304-1050

MAILED

AUG 31 2009

OFFICE OF PETITIONS

In re Application of  
Peter C. Brooks et al.  
Application No. 10/782,728  
Filed: February 18, 2004  
Attorney Docket No. 31747-705.201

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:  
: LETTER REGARDING  
: PATENT TERM ADJUSTMENT  
:

This letter is in response to the "LETTER REGARDING PATENT TERM ADJUSTMENT", filed May 29, 2009. Pursuant to their duty of good faith and candor to the Office, applicants note that the patent term adjustment pursuant to 35 U.S.C. 154(b) of 456 days indicated on the Determination of Patent Term Adjustment, may potentially be 407 days.

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED**. The PTA at the time of the mailing of the notice of allowance is 407 days.

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is four hundred seven (**407**) days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On March 23, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 407 days. Applicants do not state a basis for their disclosure that the Patent Term Adjustment on the Notice of Allowance disagrees with their calculation.

Nonetheless, a review of the record reveals that the initial determination of patent term adjustment of 456 days is incorrect. Pursuant to 37 CFR 1.704(c)(8) a period of reduction of 49 days should have been entered.

37 CFR 1.704(c)(8) provides that:

the submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set

forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed;

In this instance, the filing of the Supplemental Information Disclosure Statement on April 14, 2008 is considered a failure to engage under 1.704(c)(8). The IDS was not expressly requested by the examiner. The IDS did not include a 1.704(d) statement

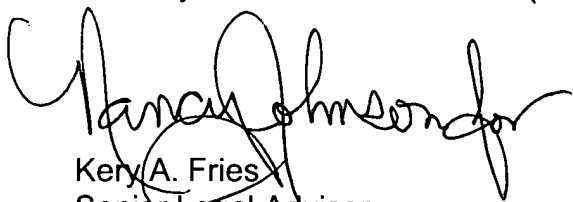
A period of 49 additional days should have been deducted for a total of 141 days for Applicant Delay.

In view thereof, the determination of Patent Term Adjustment at the time of the mailing of the notice of allowance is FOUR HUNDRED SEVEN (407) days (548 days of Office delay reduced by 141 (92 + 49) days of applicant delay).

As this letter was submitted as an advisement to the Office of an error in Applicants' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

The Office of Data Management has been advised of this decision. The application is, thereby, forwarded to the Office of Data Management for issuance of the application. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

A handwritten signature in black ink, appearing to read "Kery A. Fries". The signature is fluid and cursive, with a large initial "K" and "F".

Kery A. Fries  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Examination Policy

Enclosure: Copy of Revised PALM Screen

Day : Friday  
Date : 8/28/2009

# PALM INTRANET

Time: 17:39:37

## PTA Calculations for Application: 10/782728

Application Filing Date:	02/18/2004	PTO Delay (PTO):	548
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	92
Post-Issue Petitions:	0	Total PTA (days):	407
PTO Delay Adjustment:	-49		

## File Contents History

Number	Date	Contents Description	PTO	APPL	START
78	08/28/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		49	
67	03/23/2009	MAIL NOTICE OF ALLOWANCE	113		54
63	08/21/2008	ISSUE REVISION COMPLETED			
62	08/21/2008	DOCUMENT VERIFICATION			
61	08/18/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
59	08/18/2008	EXAMINER'S AMENDMENT COMMUNICATION			
58	08/18/2008	NOTICE OF ALLOWABILITY			
57	08/07/2008	DATE FORWARDED TO EXAMINER			
56	07/30/2008	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
55	08/07/2008	DATE FORWARDED TO EXAMINER			
54	07/30/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)			
53	08/07/2008	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
52	07/28/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
51	07/31/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
50	06/09/2008	MAIL FINAL REJECTION (PTOL - 326)			
49	06/06/2008	FINAL REJECTION			
48	04/14/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
46	04/14/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
45	03/27/2008	DATE FORWARDED TO EXAMINER			
44	02/25/2008	RESPONSE AFTER NON-FINAL ACTION		31	42
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43	02/25/2008			
42	10/25/2007	MAIL NON-FINAL REJECTION		
41	10/23/2007	NON-FINAL REJECTION		
40	08/02/2007	DATE FORWARDED TO EXAMINER		
39	07/27/2007	RESPONSE AFTER NON-FINAL ACTION		61 37
38	07/27/2007	REQUEST FOR EXTENSION OF TIME - GRANTED		
37	02/27/2007	MAIL NON-FINAL REJECTION		
36	02/20/2007	NON-FINAL REJECTION		
35	01/06/2007	DATE FORWARDED TO EXAMINER		
34	12/28/2006	RESPONSE TO ELECTION / RESTRICTION FILED		
33	11/28/2006	MAIL RESTRICTION REQUIREMENT		
32	11/27/2006	REQUIREMENT FOR RESTRICTION / ELECTION		
31	07/08/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED		
30	03/23/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED		
29	03/16/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED		
28	09/12/2006	DATE FORWARDED TO EXAMINER		
27	08/28/2006	RESPONSE TO ELECTION / RESTRICTION FILED		
26	08/28/2006	REQUEST FOR EXTENSION OF TIME - GRANTED		
25	06/27/2006	MAIL RESTRICTION REQUIREMENT	435	-1
24	06/23/2006	REQUIREMENT FOR RESTRICTION / ELECTION		
23.7	03/16/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
23	03/16/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
22	02/01/2006	CORRESPONDENCE ADDRESS CHANGE		
21	02/01/2006	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)		
20.7	03/23/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
20	03/23/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
19	12/02/2004	CORRESPONDENCE ADDRESS CHANGE		
18	09/17/2004	CASE DOCKETED TO EXAMINER IN GAU		
17	09/17/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE		

16	07/08/2004	REFERENCE CAPTURE ON IDS			
15.7	07/08/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	07/08/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	07/08/2004	PRELIMINARY AMENDMENT			
13	08/25/2004	APPLICATION RETURN FROM OIPE			
12	08/25/2004	APPLICATION RETURN TO OIPE			
11	08/25/2004	APPLICATION DISPATCHED FROM OIPE			
10	08/25/2004	APPLICATION IS NOW COMPLETE			
9	07/08/2004	PAYMENT OF ADDITIONAL FILING FEE/PREEXAM			
8	07/08/2004	A SET OF SYMBOLS AND PROCEDURES, PROVIDED TO THE PTO ON A SET OF COMPUTER LISTINGS, THAT DESCRIBE IN			
7	07/08/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
6	07/22/2004	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
5	05/14/2004	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
4	03/24/2004	CLEARED BY OIPE CSR			
3	03/24/2004	CASE CLASSIFIED BY OIPE			
2	03/09/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	02/18/2004	INITIAL EXAM TEAM NN			

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#### **EXPLANATION OF PTA CALCULATION**

#### **EXPLANATION OF PTE CALCULATION**

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